

EXHIBIT 11

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, ET AL.,)	CASE NO: 2:13-CV-00193
)	
Plaintiffs,)	CIVIL
)	
vs.)	Corpus Christi, Texas
)	
RICK PERRY, ET AL.,)	Wednesday, April 16, 2014
)	
Defendants.)	(8:16 a.m. to 8:37 a.m.)

TELEPHONE CONFERENCE

BEFORE THE HONORABLE NELVA GONZALES RAMOS,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For United States of America:	ELIZABETH WESTFALL, ESQ. U.S. Department of Justice 950 Pennsylvania Avenue, N.W. NWB 7125 Washington, DC 20009
For State of Texas:	JENNIFER ROSCETTI, ESQ. Assistant Attorney General
Court Recorder:	Lori Cayce
Clerk:	Brandy Cortez
Transcriber:	Exceptional Reporting Services, Inc. P.O. Box 18668 Corpus Christi, TX 78480-8668 361 949-2988

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

Corpus Christi, Texas; Wednesday, April 16, 2014; 8:16 a.m.

(Courtroom and Telephonic Appearances)

Call to Order

THE COURT: This is Cause Number 2-13-193, Veasey, Et al. versus State of Texas, Et al. And Brandy has done a role call here so I know who's on the phone. So we'll proceed with the motion to compel, and I believe you all have been working on it. Ms. Roscetti, do you want to proceed on that?

MS. ROSCETTI: Yes, your Honor. Thank you. This is Assistant Attorney General Jennifer Roscetti, and I'll be arguing this.

Basically the motion to compel has three main points; two which deal with a common interest privileged document and the law indicates --

THE COURT: Okay. It's my understanding the Defendant said they're not withholding anything based on common interest doctrine.

MS. ROSCETTI: Well, your Honor, the issue we have with that in both of the common interest in the law enforcement documents is while they say they haven't withheld any of those, they produced those this Monday, which was the day that this -- their opposition to this filing was due. And in that response, they stated they're continuing to search for similar documents, but this initial request for production was served on the Defendant -- on the United States in December of 2013.

1 **THE COURT:** Okay. Well, are they -- Ms. Westfall,
2 are you all asserting that common interest doctrine or not?

3 **MS. WESTFALL:** We -- there are no documents at issue
4 that are being withheld on the basis of the common interest
5 doctrine, and we do not believe that because -- because there
6 are facts before the Court on that particular doctrine, there's
7 no need to -- for the Court to issue any ruling on that.

8 **THE COURT:** Ms. Roscetti.

9 **MS. ROSCETTI:** And we would just argue, your Honor,
10 that because they -- it's been four months and they say they're
11 continuing to look for the document, as long as they state on
12 the record that there are no additional documents they're
13 looking for that they will use, and that document's a cover,
14 and they draw out discovery further, then we would be okay with
15 that.

16 **THE COURT:** Ms. Westfall.

17 **MS. WESTFALL:** Yes. Your Honor, we are currently in
18 the process of searching for e-mails that are responsive to
19 State's rather expensive request -- rather extensive request
20 for production, and it has taken us about a month to negotiate
21 search terms for that so now we are going through hundreds,
22 thousands, millions of e-mails right now --

23 **THE COURT:** Okay. But the Government doesn't intend
24 to rely on any common interest privileged doctrine, whatever it
25 may be. Is that correct?

1 **MS. WESTFALL:** It is not clear until we do the search
2 and figure out what the privileges are over the particular
3 documents.

4 **THE COURT:** Well, then -- then it's an issue. Then
5 it's an issue that the Defense needs to clear up.

6 **MS. ROSCETTI:** Well, your Honor. Jennifer Roscetti.
7 May I proceed?

8 **THE COURT:** Yes.

9 **MS. ROSCETTI:** Well, what we would propose is for
10 your Honor to by a date certain to have the Defendant identify
11 those documents and produce those documents so that discovery
12 isn't dragged out further, and we would request those documents
13 -- and if those documents -- if they are identified that they
14 want to assert this common interest document over, they produce
15 it under a protective order marked highly confidential --

16 **THE COURT:** Well, let's get a date here first because
17 maybe we're not going to have any documents.

18 Ms. Westfall, when can the Government do this?

19 **MS. WESTFALL:** We are in the process of reviewing
20 hundreds and hundreds of documents --

21 **THE COURT:** I'm asking for a date. When can this get
22 done by?

23 **MS. WESTFALL:** I -- I believe that we could probably
24 produce them -- let me look at a calendar.

25 Well, I'm not in a position right now to be able to

1 assert when we will be able to --

2 **THE COURT:** Okay. Isn't that -- isn't that what this
3 hearing is about? I told you all I'm in the middle of trial,
4 and you all said you all had streamed this line down to about
5 20 minutes.

6 **MS. WESTFALL:** Your Honor, we're in the process of
7 determining which documents to withhold and privileges to
8 assert over them.

9 **THE COURT:** I --

10 **MS. WESTFALL:** The State is also engaged in rolling
11 productions at this time. We have only recently determined the
12 search terms and negotiated those search terms with --

13 **THE COURT:** Okay. I guess in answer to my question,
14 you cannot tell the Court a date when you might have these.

15 **MS. WESTFALL:** I cannot tell the Court a date;
16 certainly I can say within a week.

17 **THE COURT:** Ms. Roscetti.

18 **MS. WESTFALL:** Your Honor, but I would like to add,
19 your Honor, that we believe that none of these documents to the
20 extent there are any communications between counsel for the
21 United States and counsel for other Plaintiffs in the case.
22 There is absolutely no relevance whatsoever to such
23 communication. Those were communications that -- and I cannot
24 produce the documents, but I imagine that they relate solely to
25 coordination of discovery (indiscernible), and trial

1 preparation. There's no reason whatsoever, it's not warranted
2 to review those documents under seal, and the State has failed
3 to --

4 **THE COURT:** Okay. Let me get this right. We don't
5 even know what documents we're discussing, right? This is like
6 a theoretical discussion we're having as to there may be some
7 documents?

8 **MS. WESTFALL:** Correct.

9 **THE COURT:** Ms. Roscetti.

10 **MS. ROSCETTI:** Your Honor, what we would suggest is
11 since they are still reviewing those documents, that they --
12 there is a date certain by which they have to have that review
13 done, and that --

14 **THE COURT:** Okay, ma'am. You heard me try to push
15 her, and she's not working with me. So what's your suggestion
16 on date and --

17 **MS. ROSCETTI:** Well, she didn't give the reasons that
18 they -- they would do something like we did with the
19 legislative privilege document where when they identified those
20 documents, there --

21 **THE COURT:** Can you provide me a date? And then I'll
22 just set that date, because the Government is not working with
23 me on a date.

24 **MS. ROSCETTI:** We -- I'm sorry, your Honor. Jennifer
25 Roscetti. We would say that we would give them two weeks.

1 **THE COURT:** Well, I'll give them 30 days.

2 **MS. ROSCETTI:** Okay. Thank you, your Honor.

3 **MS. WESTFALL:** Thank you, your Honor. I would -- I
4 would also add that these documents are not analogous to the
5 legislative privilege documents in any way, shape, or --

6 **THE COURT:** Ma'am, you don't even know what documents
7 there are yet is what I'm hearing.

8 **MS. WESTFALL:** Well, to the extent there are
9 communications between us, counsel for the United States, and
10 other Plaintiffs.

11 **THE COURT:** Are there? Are there going to be those
12 documents?

13 **MS. WESTFALL:** There are such documents, your Honor.

14 **THE COURT:** Ms. Roscetti.

15 **MS. ROSCETTI:** And we would argue, your Honor, that
16 those documents, one, are relevant to Defense and counterclaims
17 we might plead. We haven't actually filed an answer, so the
18 argument of relevance is not -- is not correct at this time
19 because they can't -- because that's what we're going to
20 counterclaim (indiscernible), and that we'd also argue that a
21 common interest doctrine in the Fifth Circuit does not apply to
22 Co-Plaintiffs. And that they haven't so far established the
23 underlying privileges that can be extended under that common
24 interest doctrine.

25 **THE COURT:** All right. Ms. Westfall, do you want to

1 respond to that?

2 **MS. WESTFALL:** I would. Thank you, your Honor.

3 Counsel for the State has just conceded that there is
4 no relevance whatsoever to these documents. She has just
5 asserted and admitted that there has been no answer filed,
6 there are no counterclaims present, and there is no relevance
7 whatsoever to these documents, so they --

8 **THE COURT:** What about the law in the Fifth Circuit
9 regarding this doctrine?

10 **MS. WESTFALL:** The Fifth Circuit has not faced a
11 question of whether the common interest doctrine applies to
12 Plaintiff. It has --

13 **THE COURT:** Okay. What about the law from the
14 District Courts in Texas?

15 **MS. WESTFALL:** It is not -- there are two decisions
16 by Magistrate Judges saying it does not apply to Plaintiffs in
17 the Fifth Circuit; however, the two circuits outside of the
18 Fifth Circuit, the Fourth Circuit and the Ninth Circuit, which
19 say those cases are cases they have recognized as common
20 interest doctrines between Plaintiffs.

21 I would also add, your Honor, that here where you
22 have ordered the United States and the other Plaintiffs to
23 engage in -- to coordinate discovery as to that decision, the
24 number of depositions and also joint interrogatories, there is
25 reason and need to have a doctrine applied to the Plaintiffs in

1 this case, and also -- I'd also add the distinction is a little
2 bit new to us because many of the Plaintiffs here were
3 Defendants -- Defendant intermediaries along with this actuary
4 Defendant, the Attorney General, and Section 5 matters here
5 really not a meaningful -- it's not a meaningful decision for
6 purposes of this case.

7 **THE COURT:** Ms. Roscetti.

8 **MS. ROSCETTI:** Your Honor, yes. I would like to
9 clarify. We are not conceding that these documents are not
10 relevant. We are just merely stating that since there is no
11 answer on file, they can't discuss the relevance for discovery
12 purposes.

13 And further, Ms. Westfall made a great point; that
14 these cases have not been extended in the Fifth Circuit to
15 Co-Plaintiffs. Rather the cases that are on point in the Fifth
16 Circuit really argue -- are very hesitant to extend it, and
17 only extend it where there are joint defenses or there's a
18 posture to where the Defendants could be together as a
19 Defendant, and they have not extended it to anything --

20 **THE COURT:** Okay. Let me see where we're at right
21 now. At this point, the Government, United States, is not
22 withholding any documents under the common interest doctrine.
23 Is that correct? Now, it's still looking for documents, and
24 they want to assert that -- that --

25 **MS. ROSCETTI:** Yes, your Honor.

1 **THE COURT:** Okay. Then I will look at that further.
2 Your briefings were filed on Monday. There was an amended
3 request for production -- motion to compel filed. The response
4 was filed very late Monday. I was in trial all day yesterday,
5 so I did look at your briefing, but I did not get to pull the
6 cases and read them to see how they apply.

7 So I'm withholding that common interest at this point
8 ruling on that. And what's the next issue, Ms. Roscetti?

9 **MS. ROSCETTI:** Yes, your Honor. Ms. Roscetti for
10 this Defendant. The logs with the privileged documents are
11 very similar to the common interest privilege documents because
12 while the United States state in their opposition to our motion
13 to compel that they have not withheld any form of document
14 based on the law enforcement privilege, we know for a fact they
15 have actually not started searching for those documents.

16 **THE COURT:** Okay, Ms. Westfall. Are you all looking
17 for those documents as well?

18 **MS. WESTFALL:** Well, that is -- that is not correct.
19 We have produced many, many documents. First of all, just a
20 bit of background on the request to which Ms. Roscetti is
21 referring.

22 The State has requested -- let me get this request.

23 All documents relating to any allegations
24 substantiated or unsubstantiated of further fraud in any
25 national, state, or local elections within the United States.

1 And that's without a conversation so that's
2 especially (indiscernible). In response to this request, the
3 United States has produced a very large volume of documents
4 related to election crimes from the Department of Justice,
5 Civil Rights Division and Criminal Division, complaints
6 alleging voter fraud that has come into the voting section of
7 the Civil Rights Division, and we are presently in the process
8 of negotiating with the State further broader searches
9 involving the FBI, the Criminal Division, the Public Integrity
10 Section, and the Executive Offices of the United States
11 Attorney, so it's simply not correct that we have not produced
12 any documents related to their fraud case.

13 **THE COURT:** Ms. Roscetti.

14 **MS. ROSCETTI:** Yes, your Honor. When we spoke to
15 them on Tuesday of this week, we were discussing the progress
16 of the United States contact with these other entities such as
17 the FBI or even the United States Attorney's Office to find
18 these documents.

19 What we were told is that they're still in the
20 process of determining what these agencies do related to
21 turning over these documents.

22 **THE COURT:** Okay. Am I hearing the same thing again?
23 The Government has produced what it has, but it's still looking
24 for documents that it may want to claim is privilege on? Is
25 that the same situation we're in?

1 **MS. ROSCETTI:** That's correct.

2 **MS. WESTFALL:** Your Honor --

3 **MS. ROSCETTI:** Yes.

4 **THE COURT:** Okay.

5 **MS. WESTFALL:** Your Honor --

6 **THE COURT:** Is it really ready for me to consider?

7 **MS. WESTFALL:** It is not, your Honor. This is
8 Elizabeth Westfall.

9 **THE COURT:** Ms. Roscetti.

10 **MS. ROSCETTI:** Your Honor, Jennifer Roscetti. I
11 would argue -- and the Defendant would argue that it is ready
12 for it to be considered because they can't argue that it's not
13 ripe when they haven't produced or searched for the documents.

14 **THE COURT:** But I thought -- I thought I heard
15 they're in the process.

16 **MS. ROSCETTI:** The problem, your Honor -- Jennifer
17 Roscetti, for the Defendant. These requests were propounded --

18 **THE COURT:** Okay. Well, let's give them a date
19 certain again. Thirty days for both.

20 **MS. ROSCETTI:** Thank you.

21 **THE COURT:** Both categories. How about that,
22 Ms. Westfall?

23 **MS. WESTFALL:** Thank you, your Honor.

24 **THE COURT:** Okay. What else?

25 **MS. ROSCETTI:** Your Honor, the last issue is

1 concerning the United States privileged logs, and it really
2 deals with two assertions that they're privileged. A work
3 product privilege, and then there's a liberative process
4 privilege.

5 The problem with their work product assertion in
6 their privileged log is that after they've amended it two
7 times, they're still precursory, and it's very hard for the
8 Defendant to appropriately evaluate these work product
9 assertions.

10 Mainly issues are where they assert work product.
11 There is information missing from the two -- for recipient
12 field as well as the date. And under the -- the Federal Rules,
13 the work products doctrine designation requires that the
14 document be prepared by or for the party or their
15 representative in anticipation of litigation or for trial.
16 When we don't have a date, we can't determine when these were
17 prepared for.

18 **THE COURT:** Right. Reading the briefs, I thought
19 some of those did not have dates. So, I mean, if there's not a
20 date on them -- there were some notes or something I gathered
21 from the briefing that maybe weren't dated. Is that right,
22 Ms. Westfall?

23 **MS. WESTFALL:** Yes, the dates were unavailable.

24 **THE COURT:** Okay. I mean, they're not available.
25 The dates are not available.

1 **MS. ROSCETTI:** And your Honor, there are other places
2 where they're not listed. And this is Jennifer Roscetti for
3 the State -- for the Defendant.

4 The problem is that United States through the
5 Department of Justice engages in what is -- they do the
6 preclearance evaluations of certain things that have specific
7 information to see whether their voting logs can be researched,
8 but then they also engage in litigation. So they kind of have
9 this dual purpose.

10 And so as they're looking at documents during this
11 preclearance stage, and then they argue that these documents
12 aren't relevant towards this litigation, without a date, and
13 there are documents there that just don't have a date listed
14 and it doesn't say they're not available. We can't determine
15 whether the document was made during the preclearance stage or
16 during --

17 **THE COURT:** Okay.

18 **MS. ROSCETTI:** -- really in anticipation of
19 litigation.

20 **THE COURT:** So why can't we address that,
21 Ms. Westfall, just to make it clear?

22 **MS. WESTFALL:** Certainly. I mean, I can represent
23 that the logs where there is no date available on the document
24 certainly is not, but they -- they've not been able to put a
25 date on those logs. But I can represent to you, having

1 reviewed these documents, that all of the documents concerning
2 attorney notes where essential witnesses are similar, and we
3 believe that they are -- were all produced during the same
4 period on or around the beginning of April 2012, which was
5 during the litigation affecting the people during the discovery
6 phase.

7 **THE COURT:** Is that sufficient, Ms. Roscetti?

8 **MS. ROSCETTI:** I believe so, your Honor.

9 **THE COURT:** Okay. What else then on the privileged
10 log?

11 **MS. ROSCETTI:** The other thing is there's a
12 liberative process assertion, and that this is twofold. They
13 basically produced redacted form documents that have been made
14 public, and the document --

15 **THE COURT:** I'm sorry. I didn't catch that.

16 **MS. ROSCETTI:** I'm sorry. There's a liberative
17 process assertion that are twofold to their argument. Some of
18 the assertions go to documents that were producing redacted
19 forms of their public documents. Under the liberative process
20 privilege, there are five elements, one of which is that those
21 documents with that information should not have been shared
22 with the public. If it had, there's no privilege.

23 **THE COURT:** Okay. Do you have public documents,
24 Ms. Westfall?

25 **MS. WESTFALL:** I'm not sure which documents

1 Ms. Roscetti is referring to.

2 **MS. ROSCETTI:** Your Honor, Jennifer Roscetti. The
3 documents I'm referring to are on the privileged log, it will
4 say "portion of letter to" and it's a non-DOJ entity. And it
5 has something about -- indicating internal distribution. And
6 what has happened is, that letter is a letter from the
7 Department of Justice of the United States to an outside
8 entity --

9 **THE COURT:** Okay. Well, that should be pretty easy
10 to determine. Ms. Westfall.

11 **MS. WESTFALL:** Yes. These -- what she is referring
12 to, first of all, just a bit of background, the United States
13 has asserted that the liberative process privilege is grounds
14 for withholding or redacting documents related to the Attorney
15 General's determination from the Commission of Voting Changes
16 under Section 5. This includes internal staff comments and
17 information that identifies --

18 **THE COURT:** Okay. She's talking about public
19 documents. Documents you all send to someone outside of your
20 department.

21 **MS. WESTFALL:** Correct. These -- these
22 correspondence which have been produced -- all of the
23 underlying correspondence has been produced to the State months
24 ago, perhaps years ago, in previous litigation; it includes on
25 the internal copy within DOJ will have information related to

1 who received the copy internally within the Department of
2 Justice. That information has not been disclosed to the
3 public. It has not been waived under the, you know, five
4 factor test which Ms. Roscetti referred; nor is it -- does it
5 have any relevance whatsoever to this litigation.

6 **MS. ROSCETTI:** And, your Honor, Jennifer Roscetti for
7 the State. We -- from the privileged log, we cannot infer that
8 information, and we've actually asked the Defendant for more
9 clarification --

10 **THE COURT:** Okay. Ms. Westfall, I think you need to
11 provide more clarification on that.

12 **MS. WESTFALL:** Sure.

13 **THE COURT:** On the privileged log. I don't have time
14 to sit here and listen to it, but I think you all can visit,
15 amend your privileged log, whatever it needs to be make it --
16 to make it clear to the Defendants.

17 **MS. WESTFALL:** Certainly, your Honor.

18 **THE COURT:** Okay. What else? Because I'm going to
19 have to start wrapping up here. Did you all discuss the
20 attorney-client privilege further regarding the documents that
21 were requested for the Defendants?

22 **MS. ROSCETTI:** Your Honor, Jennifer Roscetti with the
23 State. The Defendant -- or I'm sorry. The United States has
24 produced all of the documents at issue as to attorney-client --

25 **THE COURT:** Okay. So that's no longer an issue.

1 We'll have to -- maybe we can gather in a couple of weeks to
2 discuss how we want to proceed with the trial. We can set
3 another hearing.

4 But what else on the motion to compel that was
5 reported quick this morning?

6 **MS. ROSCETTI:** Your Honor, Jennifer Roscetti, with
7 Defendant. There are other documents that have been delivered
8 to process assertion. Under it where the United States has
9 indicated -- because it's my understanding that their
10 indication of when they say "portion of," that indicated
11 they're redacting. They have maintained in their opposition to
12 our motion that they have produced those documents, but when
13 we've looked back at our discovery, those documents haven't
14 even been produced redacted or not, and we would argue that
15 those documents are relevant, and under the liberative process
16 privilege is a qualified privilege much like the legislative
17 privilege, with a balancing test, that those documents should
18 be produced as well, by a date certain so that we can speed up
19 this discovery.

20 **THE COURT:** Were they produced, Ms. Westfall?

21 **MS. WESTFALL:** I can -- we believe we have produced
22 everything --

23 **THE COURT:** Okay. You know, I keep hearing "we
24 believe we've produced them"; "no, we haven't." Why am I
25 getting dragged into that? You all should be able to figure

1 that out.

2 **MS. WESTFALL:** Assertion. Yes, we have produced --
3 we have produced the underlying correspondence of all of said
4 documents over which we have held the liberative process
5 privilege over minor tiny redacted portions of those letters
6 indicating internal distribution within the Department of
7 Justice. We have produced those documents years ago to the
8 State.

9 **THE COURT:** Ms. Roscetti.

10 **MS. ROSCETTI:** Your Honor, I was not involved in the
11 previous litigation, so whatever she -- if Ms. Westfall states
12 that, it's very difficult for me --

13 **THE COURT:** Okay. Well, then it sounds like you all
14 need to confer further. Correct?

15 **MS. ROSCETTI:** Your Honor, Jennifer Roscetti. I
16 would propose we can point out these documents that there are
17 discrepancies with and then we can come to another
18 (indiscernible) there won't be further back and forth --

19 **THE COURT:** Okay. Well, you all can certainly do
20 that, but I'm going to have to reset you. So if you all want
21 to gather on that, be real specific about what I need to
22 address, we can, you know, I might be able to visit with you
23 tomorrow morning again at 8:15, or during the lunch hour.

24 But you know, I can't get in the middle of this.
25 Yes, we've produced. No, you all haven't. And I don't have

1 that time right now.

2 So if you all want to gather at 8:15 tomorrow, or at
3 12:30 tomorrow, let Brandy know.

4 And forward to me what I need to see by 5:00 o'clock
5 today.

6 **MS. ROSCETTI:** Thank you, your Honor.

7 **THE COURT:** Okay. What else on motion to compel?

8 **MS. ROSCETTI:** Your Honor, Jennifer Roscetti. That
9 is it.

10 **THE COURT:** Okay. So then it's my understanding
11 Brandy is going to set a status hearing in about two weeks so
12 we can discuss our trial plan, and she'll get with you on that.

13 And then regarding these -- what we've discussed this
14 morning on the motion to compel, Government is going to provide
15 documents within 30 days or we're going to have to visit
16 further about the common interest doctrine; the law enforcement
17 privilege. We've addressed the privileged log. Government is
18 going to be more detailed specific about the matters that were
19 in question, and you all are going to let me know by 5:00
20 o'clock today what I need to address either tomorrow at 8:15 or
21 at 12:30. Correct?

22 **MS. ROSCETTI:** Yes, your Honor.

23 **THE COURT:** And I didn't let anyone else speak. Does
24 anyone else on the phone have anything to say?

25 **MR. SPEAKER:** No, your Honor.

1 **THE COURT:** Okay then. You're excused. Just get
2 with Brandy.

3 **THE CLERK:** Your Honor --

4 **MS. ROSCETTI:** Thank you, your Honor.

5 **MS. WESTFALL:** Thank you.

6 **THE CLERK:** -- do you want to set the
7 (indiscernible)?

8 **THE COURT:** You can do that with them later.

9 **(This proceeding was adjourned at 8:37 a.m.)**

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

April 17, 2014

TONI HUDSON, TRANSCRIBER